STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED August 4, 2000
v	No. 216245 Kent Circuit Court
HARRY JOHNSON, Defendant-Appellant.	LC No. 98-002783-FC

Before: Fitzgerald, P.J., and Bandstra, C.J., and O'Connell, J.

PER CURIAM.

Defendant appeals as of right from his convictions in a jury trial of armed robbery, MCL 750.529; MSA 28.797, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). We affirm.

Defendant first argues that the trial court erred by allowing the prosecution to add two witnesses, Becky Aldrich and Tyrone Cole, on the second day of trial. We review a trial court's decision to allow the late endorsement of witnesses for an abuse of discretion. *People v Gadomski*, 232 Mich App 24, 32-33; 592 NW2d 75 (1998). MCL 767.40a; MSA 28.980(1) sets out the prosecution's duties with regard to providing a witness list. It requires that the prosecution "provide [pretrial] notice of *known* witnesses and reasonable assistance to locate witnesses on a defendant's request." *Id.* at 36 (emphasis added). MCL 767.40a(4); MSA 28.980(1)(4) also allows the prosecution to add to its witness list at any time upon leave of court and for good cause shown. The prosecution is not required to exercise due diligence to discover the names of witnesses. *Gadomski, supra* at 36.

With respect to Aldrich, the record shows that the prosecution did not discover until the second day of trial that she had pertinent information regarding the case. Therefore, the prosecution had no duty to include her on its pretrial witness list, and it also demonstrated good cause for her late endorsement as a witness. *Gadomski, supra* at 37. Accordingly, the trial court did not abuse its discretion by allowing the prosecution's late endorsement of Aldrich.

With respect to Cole, we need not decide whether the trial court erred in allowing his late endorsement as a witness, since his testimony did not affect the outcome of the trial. As stated in *People v Lukity*, 460 Mich 484, 495; 596 NW2d 607 (1999), preserved nonconstitutional error warrants reversal only if "it is more probable than not that a different outcome would have resulted without the error." Cole did not testify that defendant participated in the instant crime. While Cole testified that defendant was with two known accomplices on the day in question, this testimony was cumulative of other witnesses' testimony and did not go to the central issue of defendant's guilt or innocence. Under these circumstances, Cole's testimony did not "more probabl[y] than not" affect the outcome of the case, and therefore reversal is unwarranted regardless of whether Cole's late endorsement as a witness was proper. *Lukity, supra* at 495-496.

Next, defendant argues that the trial court erred by refusing to allow his counsel to withdraw and failing to grant a continuance to allow him to seek other counsel. We review a trial court's decision in this regard for abuse of discretion. *People v Charles O Williams*, 386 Mich 565, 578; 194 NW2d 337 (1972); *People v Echavarria*, 233 Mich App 356, 368; 592 NW2d 737 (1999). In *Echavarria*, this Court set forth the following factors to be considered in determining whether the trial court abused its discretion in denying defense counsel's motion to withdraw and for a continuance to allow defendant to obtain new counsel:

> (1) whether the defendant is asserting a constitutional right, (2) whether the defendant has a legitimate reason for asserting the right, such as a bona fide dispute with his attorney, (3) whether the defendant was negligent in asserting his right, (4) whether the defendant is merely attempting to delay trial, and (5) whether the defendant demonstrated prejudice resulting from the trial court's decision. [*Id*. at 369.]

The only reason defendant provides in his appellate brief for his need for new counsel is the fact that he had filed a grievance against his trial attorney. Defendant asserts the following in his brief: "Without question, the mere fact that [defendant] filed a grievance against his appointed attorney justified a legitimate reason for the appointment of new counsel." We disagree with this assertion. The mere filing of a grievance, without more, is insufficient to establish the necessary factors, including a "bona fide dispute," necessary to warrant the withdrawal of an attorney and the granting of a continuance. See *People v Hernandez*, 84 Mich App 1, 9; 269 NW2d 322 (1978) (bona fide dispute does not exist simply because defendant is unsatisfied with efforts of attorney).

Other than the filing of the grievance, defendant provides no reasons to conclude that the trial court should have granted his continuance request. "A party may not merely announce a position and leave it to us to discover and rationalize the basis for the claim." *People v Leonard*, 224 Mich App 569, 588; 569 NW2d 663 (1997). In any event, we are satisfied that the trial court did not abuse its discretion in denying defendant's request. First, the record does not support defendant's assertion below that his trial counsel failed to work hard enough or that counsel was negligent for failing to hire an investigator. Second, defendant failed to assert his claim until less than two weeks before a rescheduled trial date and was therefore negligent in asserting his right. Lastly, defendant failed to demonstrate prejudice resulting from the court's ruling. No abuse of discretion has been shown. *Echavarria, supra* at 369-370.

Finally, defendant argues that the prosecution presented insufficient evidence to support his conviction. When reviewing the sufficiency of the evidence in a criminal case, "the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson v Virginia*, 443 US 307, 319; 99 S Ct 2781; 61 L Ed 2d 560 (1979); *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748, amended 441 Mich 1201 (1992).

"The elements of armed robbery are: (1) an assault, (2) a felonious taking of property from the victim's presence or person, (3) while the defendant is armed with a weapon described in the statute." *People v Turner*, 213 Mich App 558, 569; 540 NW2d 728 (1995). The eyewitness testimony of workers at the party store established both an assault and the felonious taking of property from the victims. Their testimony also established that both of the robbers were armed with dangerous weapons. The testimony of the codefendants established that defendant was the perpetrator who committed the assault with the "long" gun and demanded and received money from the store clerk. The testimony of the eyewitnesses and the codefendants, when viewed in the light most favorable to the prosecution, provided more than sufficient evidence from which a rational trier of fact could find that the elements of armed robbery were proved beyond a reasonable doubt. In making his argument that the evidence was insufficient, defendant points to the lack of physical evidence connecting defendant with the offense and questions the credibility of the codefendants' testimony. Testimony by eyewitnesses as to the commission of the offense, together with testimony by a codefendant connecting the defendant with the offense, has been found sufficient to support a conviction. See *People v Daniels*, 172 Mich App 374, 378; 431 NW2d 846 (1988). As for defendant's challenge to the credibility of his codefendants, it is the role of the jury to determine the weight of the evidence and the credibility of witnesses. *Wolfe, supra* at 514-515; *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997). This Court cannot determine what testimony to believe. *Id*.

We affirm.

/s/ E. Thomas Fitzgerald
/s/ Richard A. Bandstra
/s/ Peter D. O'Connell